IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15349 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NILKAMAL GYMKHANA PVT. LTD.

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 15349 of 2003

MR AR MAJMUDAR for Petitioner No. 1

MR KL PANDYA AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 16/12/2003

ORAL JUDGEMENT

1. Heard ld.counsel appearing for the parties.

2. By invoking jurisdiction of this Court under

Article 226 of the Constitution of India, the petitioner Nilkamal Gymkhana Pvt.Ltd.,Jamnagar (hereinafter referred to as "petitioner company" for short) has prayed following main reliefs:-

(A) xxx xxx xxx
(B) be pleased to issue a writ of mandamus and or any other appropriate writ, order or directions, declaring that the provisions of Bombay Prevention of Gambling Act are not applicable to the game of 13 Cards known as Rummy;
(C) xxx xxx xxx
(D) xxx xxx xxx

3. The petitioner is a company duly registered under the provisions of the Companies Act, 1956 and as per the objects of the company one gymkhana is being run. The main activities of the petitioner company is to entertain its members and to run restaurant and other sports and games activities. It is the say of the petitioner that frequent visits by the officers of the State of Gujarat have disturbed the activities and they have been threatened to close games of Rummy. According to ld. counsel Mr. Majmudar, conjunctures or assumptions attributed to the petitioner company being highly unjust, illegal, arbitrary and unreasonable and, therefore, the reliefs as prayed be granted. Ld. counsel Mr.Majmudar has taken me through the relevant contentions raised in the petition. In support of his submissions, Mr. Majmudar has taken me through relevant documents produced by the petitioner including certificate of incorporation and Memorandum of Association of the Company. He has mainly placed reliance on the following decisions; namely-

(i) Decision in the case of Sudama Resorts Pvt. Ltd. v/s State of Gujarat, rendered by this Court in Spl.C.A. No. 10105/2001 on 5.11.2001 (Coram: Kundan Singh, J);
(ii) Decision in the case of Kismat Gymkhana Pvt.Ltd. v/s State of Gujarat, rendered by this Court in Spl.C.A. No.3341/2001 on 7.8.2001 (Coram : K.M.Mehta,J);

Mr. Majmudar has also referred to number of various decisions in the memo of petition wherein similar issues were brought before this Court under Article 226 of the Constitution of India. Mr. Majmudar has also submitted this Court has also accepted the similar plea

in the case of Ahmedabad Gymkhana Pvt. Ltd. v/s State of Gujarat vide judgment dated 12.11.2003 in Spl.C.A. No. 8934/2003. On the other hand, ld. AGP Mr. Pandya has stated that the petitioner wrongly apprehends raid under the Bombay Prevention of Gambling Act. Sec.13 of the said Act clarifies the situation and it does not apply to any game of mere skill being played in the club and club can not be permitted to offer game which can be said to be a game of a mere chance.

4. It would be appropriate to quote relevant part of para-5 of the decision of this Court in the case of Sudama Resorts Pvt.Ltd. (supra), wherein the Court has observed that:-

> " Therefore, regard being had to the contention coming from the learned counsel Mr. Majmudar and the decision of the Supreme Court in the case of the State of Andhra Pradesh (supra) and the decisions of this Court it appears that the present petition requires recognition and the rule requires to be made absolute. I order accordingly and direct that the respondents shall not interfere with the game of Rummy and Marriage being played by the members of the petitioner club and their guests in the club premises. These orders shall never preclude the concerned respondents or the officers working under them from taking appropriate action under appropriate provisions of the relevant law and the rules, if it is found that the member or the members of the club are playing any other game which could be said to be objectionable or prohibited under the law or the rules."

5. In response to the query raised by the Court, ld. AGP Mr. Pandya has fairly accepted that the petitioner club is doing its activities since many years and none of the members of the club or their guests visiting premises of the club have been held guilty of the offences punishable under the Gambling Act in reference to the raids carried out at the premises of the company either in the year 1992 or 1993 or 1994. Rummy is the game which is skill game and which is being played with playing cards (cat) and this game is not mere a chance game. Hence, considering the facts and circumstances of the case and settled legal position, this petition requires to be allowed.

6. In view of above, this petition is allowed. It is hereby ordered and directed that the respondents and

his officers shall not interfere with the game of Rummy being played by the members of the petitioner club and their guests in the club premises. These orders shall never preclude the concerned respondents or the officers working under them from taking appropriate action under appropriate provisions of the relevant law and the rules, if it is found that the member or the members of the club are playing any other game which could be said to be objectionable or prohibited under the law or the rules."

7. Rule is made absolute accordingly. No order as to costs. DS permitted.

[C.K. BUCH, J]

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